

INSTRUCTION**Special Education****A. Definitions****1. Special Education**

Special education means classroom, home, hospital, institutional or other instruction designed to meet the needs of disabled students and transportation, corrective and supportive services required to assist disabled students in taking advantage of or responding to educational programs and opportunities commensurate with their abilities.

2. Disabled Students

Disabled students include those who are Autistic, Deaf-Blind, Developmentally Delayed, Hearing Impaired, Mentally Retarded, Multi-disabled, Orthopedically Impaired, Other Health Impaired, Preschool Developmentally Delayed, Emotionally Disturbed, Learning Disabled, Speech or Language Impaired, Visually Impaired, Traumatic Brain Injured or otherwise defined by the State Board of Education.

B. Goals

The school board adopts the following policies of special education and will support services and programs to achieve them subject to an extent proportionate to the funding thereof provided by the State and federal governments:

1. Students have the right to a free and appropriate public education in the least restrictive environment. A child is to be educated with nondisabled, age-appropriate children to the maximum extent appropriate. Special education and related services, including all assessments needed for a comprehensive evaluation are to be provided at no cost to parents.
2. It is the policy of the school board that disabled children and their parents and guardians are guaranteed procedural safeguards in the process of identification, evaluation and placement.

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Special EducationB. Goals (continued)

3. It is the policy of the school board that to the maximum extent appropriate disabled students will be educated with students who are not disabled.
4. It is the policy of the school board the confidential records of disabled students shall be properly maintained.
5. It is the policy of the school board that testing and evaluative materials utilized for the purpose of classification and placement of disabled children are selected and administered so as not to be racially or culturally discriminatory.
6. It is the policy of the school board that, in order to comply with Public Law 94-142 regarding individualized instruction, each student who is enrolled in an approved program of special education shall have on his/her teacher's room, an individualized education plan. These plans shall include the student's academic strengths and weaknesses, long and short-term teaching objectives and shall provide for evaluation of progress.
7. It is the policy of the school board to encourage and support inservice training of general and special education instructional and support personnel.
8. It is the policy of the school board that there will be ongoing parent or guardian consultation.
9. It is the policy of the school board to assure that a full educational opportunity goal is provided for all disabled persons aged two to twenty-one (inclusive), including appropriate career education, pre-vocational education and vocational education.
10. It is the policy of the school board to allow all disabled students to participate in the Literacy testing program.

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Special EducationB. Goals (continued)

11. It is the policy of the school board to appoint, when appropriate, surrogate parents to act as advocates to serve the educational interests of children and youth, ages 2 to 21, inclusive, who are suspected of being or have been determined to be disabled.
12. It is the policy of the school board to cooperate with neighboring school divisions in providing joint services to accomplish these goals.
13. When the school division is unable to provide a free, appropriate public education for a particular disabled student, it is not available in a neighboring school division, and is not available in a State facility, the school board will offer to place the child in a private nonsectarian school approved by the Board of Education of the Commonwealth of Virginia. The school board will pay on behalf of the parent or guardian of such student the reasonable tuition cost and other charges as determined by the State Board of Education.

Legal Reference: (1988) §22.1-253.13:1. Editorial changes only.

Code of Va., §22.1-253.13:1. Standard 1. Basic skills, selected programs, and instructional personnel.—" . . . D. Local school boards shall also implement the following:

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 6. Early identification of handicapped students and enrollment of such students in appropriate instructional programs consistent with state and federal law. . . ." (1988)

Virginia State Board of Education Regulations, "Standards for Accrediting Public Schools in Virginia," Standard C at Criterion #18.

Code of Va., §22.1-213. Definitions.—"As used in this article:

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"Handicapped children" means those persons (i) who are aged two to twenty-one, inclusive, having reached the age of two by the date specified in §22.1-254, (ii) who are mentally retarded, physically handicapped, seriously emotionally disturbed, speech impaired, hearing impaired, visually impaired, multiple handicapped, other health impaired including autistic or who have a specific learning disability or who are otherwise handicapped as defined by the Board of Education and (iii) who because of such impairments need special education.

"Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a handicapped child to benefit from special education, including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.

"Special education" means specially designed instruction, at no cost to the parent, to meet the unique needs of a handicapped child, including classroom instruction, home instruction, and instruction provided in hospitals and institutions, instruction in physical education and instruction in vocational education.

"Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or do mathematical calculations. The term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation, or of environmental, cultural or economic disadvantage.

Code of Va., §22.1-214. Board to prepare special education program for handicapped children.—"A. The Board of Education shall prepare and supervise the implementation by

each school division of a program of special education designed to educate and train handicapped children between the

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ages defined in §22.1-213 and may prepare and place in operation such program for such individuals of other ages. The program developed by the Board of Education shall be designed to ensure that all handicapped children have available to them a free and appropriate education, including specially designed instruction to meet the unique needs of such children. The program shall require (i) that the hearing of each handicapped child be tested prior to placement in a special education program and (ii) that a complete audiological assessment, including tests which will assess inner and middle ear functioning, be performed on each child who is hearing impaired or who fails the test required in (i) hereof. The school boards of the several school divisions, the Department for the Visually Handicapped, the Department for the Deaf and Hard of Hearing, Department of Health and other State and local agencies which can or may be able to assist in providing educational and related services shall assist and cooperate with the Board of Education in the development of such program.

B. The Board of Education shall prescribe procedures to afford due process to handicapped children and their parents or guardians and to school divisions in resolving disputes as to program placements, individualized education programs, tuition eligibility and other matters as defined in State or federal statutes or regulations.

C. The Board of Education may provide for final decisions to be made by a hearing officer. The parents and the school division shall have the right to be represented by legal counsel or other representative before such hearing officer without being in violation of the provisions of §54.1-3904 of the Code of Virginia.

D. Any party aggrieved by the findings and decision made pursuant to the procedures prescribed pursuant to subsections B. and C. of this section may bring a civil action in the circuit court for the jurisdiction in which the school division is located. In any such action the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and basing its decision on the preponderance of the evidence, shall grant such relief as the court determines appropriate.

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E. Whenever the Board of Education, in its discretion, determines that a school division fails to establish and maintain programs of free and appropriate public education which comply with regulations established by the Board, the Board may withhold all special education moneys from the school division and may use the payments which would have been available to such school division to provide special education, directly or by contract, to eligible handicapped children in such manner as the Board considers appropriate.

F. The Board of Education shall supervise educational programs for handicapped children by other public agencies and shall assure that the identification, evaluation and placements of handicapped children and youth in education programs by other public agencies, as appropriate, are consistent with the Board of Education's special education regulations.

G. The Board of Education shall prescribe regulations to provide a range of assessment procedures for the evaluation of handicapped children. These regulations shall include provision for parents to participate, if they so request, in the consideration of the assessment components to be used. However, such regulations shall not require any local school board to exceed the requirements of federal law or regulations for the identification and evaluation of handicapped children.

Code of Va., §22.1-215. School divisions to provide special education: plan to be submitted to Board.—"Each school division shall provide free and appropriate education, including special education, for the handicapped children residing within its jurisdiction in accordance with regulations of the Board of Education.

For the purposes of this section, 'handicapped children residing within its jurisdiction' shall include: (i) those individuals of school age identifies as appropriate to be placed in public school programs, who are residing in a state institution operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services located within the school division or (ii) those individuals of school age who are Virginia residents and are placed and living in a foster care home or child-caring institution or group home located within the school division and licensed under the provisions of Chapter 10 (§63.1-195 et seq.) of Title 63.1 as

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result of being in the custody of a local department of social services or welfare or being privately placed, not solely for school purposes.

The Board of Education shall promulgate regulations to identify those children placed within facilities operated by the Department of Mental Health, Mental Retardation, and Substance Abuse Services who are eligible to be appropriately placed in public school programs.

The cost of the education provided to children residing in the state institutions, who are appropriate to place within the public schools, shall remain the responsibility of the Department of Mental Health, Mental Retardation and Substance Abuse Services.

The cost of the education provided to children who are not residents of the Commonwealth and are placed and living in a foster care home or child-caring institution or group home located within the school division and licensed under the provisions of Chapter 10 (§63.1-195 et seq.) of Title 63.1 shall be billed to the sending agency or person by the school division as provided in subsection C of §22.1-5. No school division shall refuse to educate any such child or charge tuition to any such child.

Each school division shall submit annually to the Board of Education by such date as the Board shall specify a plan acceptable to the Board for such education for the year following and a report indicating the extent to which the plan required by law for the preceding year has been implemented." (1988)

Code of Va., §22.1-216. Use of public or private facilities and personnel under contract for special education.—"A school board may provide special education for handicapped children either directly with its own facilities and personnel or under contract with another school division or divisions or any other public or private nonsectarian school, agency or institution approved by the Board of Education." (1980)

Code of Va., §22.1-219. Use of federal, State or local funds not restricted.—"Nothing in this article shall be construed to restrict or prohibit the use of any federal,

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State or local funds made available under any federal, State or local appropriation or grant." (1980)

Code of Va., §22.1-220. Power of counties, cities and towns to appropriate and expend funds for education of handicapped children.—"The governing body of any county, city, or town is hereby authorized and empowered to appropriate and expend funds of the county, city or town in furtherance of the education of handicapped children residing in such county, city or town who attend Woodrow Wilson Rehabilitation Center or public or private nonsectarian schools, whether within or without the county, city or town and whether within or without the Commonwealth." (1989)

Adopted by School Board: March 24, 1987
Amended by School Board: May 12, 1992